Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

No. 02 654

In the Supreme Court of the United States

KRISTIN R. KAZYAK,

Petitioner,

v.

THOMAS L. WINSTEAD,

Respondent

Petition for a Writ of Certiorari to the United States Court of Appeals for the Circuit Court of Warren County

PETITION FOR A WRIT OF CERTIORARI

KRISTIN R. KAZYAK, *pro se*
128 West Main Street
Front Royal, Virginia 22630
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67 pp

QUESTIONS PRESENTED

1. Whether the Warren County Circuit erred by denying the 14th Amendment right to due process of law by virtue of the arbitrary and capricious actions and omissions of the Virginia State courts in overlooking and/or misapprehending substantive points in denying the appeal from what was concededly, indeed indisputably, a retaliatory eviction of a tenant in patent violation of the *Tenant Remedies* provisions of the Virginia State civil code, Title 55 of the *Virginia Landlord Tenant Act for Tenant Remedies.*

2. Whether the Warren County Circuit by arbitrary and capricious judgment failed to uphold and enforce a reasonable and unprejudiced use of the 30-day lease termination clause thereby failing to protect the tenant's substantive federal rights in the Virginia State courts in accordance with *Article IV of the United States Constitution*, as well as those provided by Title 55 of the *Virginia Landlord Tenant Act for Tenant Remedies* and thus erred by denying the 14th Amendment right to due process of law.

3. Whether the Warren County Circuit by arbitrary and capricious judgment disregarded or ignored material evidence, and court testimony made under cross examination, that clearly demonstrated past, current and on-going acts of retaliation and non-compliance with state and federal code by the landlord against the tenant and illegitimate, unreasonable and/or prejudicial uses, or enforcement, of the tenant lease termination clauses, as established in Title 55 of the Virginia Code and *Article IV* of the *United States Constitution* and thus erred by denying the 14th Amendment right to due process of law.

4. Whether the Warren County Circuit by arbitrary and capricious judgment failed to retain, insure and order that rent placed by the tenant in escrow with the court, under the provisions of the Virginia Code for *Tenant Remedies*, be disbursed to the tenant to make repairs and effect remedy, where the landlord refused to make the repairs within a reasonable time as witnessed by the local town authorities and code officials and thus further erred by denying the 14th Amendment right to due process of law.

RULE 14.1 AND 29.6 STATEMENT

Petitioner has no parent corporation and does not issue stock to the public.

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OPINIONS BELOW

Judgments and opinions remain unreported and can be found in the Appendix.

JURISDICTION

The judgment of the circuit court of appeals was entered on November 28, 2001, and rehearing was denied on July 24. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The 14th Amendment to the United States Constitution provides that: "...No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws...." Further, it is the assumption of the Federal Courts that a citizen's substantive federal rights will be protected in the State Courts in accordance with Article IV of the United States Constitution.

STATEMENT

The decision of the lower Courts is in substantial conflict with governing precedents of this Court relating to citizens' entitlement to due process of law under the 14th Amendment to the U.S. Constitution. The judicial bench is not a proper forum for legislative review and the lower Courts acted arbitrarily and capriciously and thereby infringed the petitioner's fundamental federal constitutional

right to due process of law by summarily rejecting, without opinion or explanation and without any meaningful hearing of the petitioner's contentions, which were squarely based on Virginia Statutory and common law demonstrating that the petitioner had been subjected to a retaliatory eviction from her leased apartment. "Law is something more than mere will exerted as an act of power. It must not be a special rule for a particular person or a particular case, but ... 'the general law...' so that every citizen shall hold his life, liberty, property and immunities under the protection of the general rules which govern society, 'and thus excluding, as not due process of law, acts of attainder, bills of pains and penalties, acts of confiscation ... and other similar special, partial and arbitrary exertions of power under the forms of legislation. Arbitrary power, enforcing its edicts to the injury of the persons and property of its subjects, is not law, whether manifested as the decree of a personal monarch or an impersonal multitude." (Hurtado v. California, 110 U.S. 516, 535-38 (1884).

REASONS FOR GRANTING THE PETITION

This petition presents the question whether the liability judgment and damages award in this case comported with the Fourteenth Amendment. This case presents three issues that satisfy the traditional criteria for this Court's review — because they are important, recurring, and have conflicted the lower courts.

This case presents the question whether such arbitrary and capricious abuse of judicial discretion did through habitual or customary practice not only deprive the petitioner of due process but has the subsequent effect of enabling lower state courts to maintain areas of unconstitutional and prejudicial legal custom, unnatural racial segregation and/or religious bigotry where the lower courts omit or fail to uphold statutes legislated at the state level to protect persons, places and property for the common

good of all citizens protected by the United States Constitution.

That such arbitrary and capricious exercise of governmental power — whether it occurs at the behest of the executive, legislative or judicial branches of government — is anathema under our constitutional system is a rule so fundamental to our republic as to trace all the way back to our earliest days. Then, as now, it bore repeated emphasis that ours was "a government of laws, and not of men," and that this marked "the very essence of civil liberty." (Marbury v. Madison, 5 U.S. (1 Cranch.) 127, 163 (1803) (per Marshal, C.J.) "The very idea that one may be compelled to hold his life, or the means of living, or any material right essential to the enjoyment of life, at the mere will of another" has been thought "intolerable in any country where freedom prevails, as being the essence of slavery itself." (Yo Wick v. Hopkins, 118 U.S. 356, 370 (1886).

1. Petitioner, Kristin R. Kazyak is an individual tenant and has leased the apartment since August, 1996. The nature of the case is a petition for appeal from a civil trial and subsequent *Final Judgment Order* from the Circuit Court of Warren County on November 28 2001.

The respondent initiated this lawsuit and several other frivolous and illicit suits including eviction prior in the United States General District Court for Warren County of Front Royal in Virginia against the petitioner and a judgment for the respondent/plaintiff was rendered by the District Court on 21 September 2001, after the petitioner notified the landlord in March 2001 regarding the need for a particularly serious and significant repair that was forcing other tenants to vacate the rental property, as well requesting relief in June 1999 to remedy long-standing repairs from damage made prior to the lease of August 1996 and the need to paint the petitioner's rental apartment, which had not been painted prior to the current lease, or for several renters of apartment # 2 between 1989 and 1996.

At no time prior to defensive action did the petitioner

plan, enact, engage in or even suggest any legal actions against the landlord. As presented in court and noted by the local town code and housing authorities, the condition of the apartment at the effective date of the lease in August 1996 was well below normal and reasonable rental standards due to years of neglect and damage to the apartment by previous tenants but not repaired by the landlord. The petitioner chose to lease the apartment because of the rental's location near the petitioner's church but understood that the landlord would make the repairs over time and paid the landlord six months rent in advance with the first month's rent to facilitate repairs and painting that was never done.

I. This Court Should Resolve The Substantial Conflict In the Lower Courts of Virginia with the Governing Precedents of This Court

The petitioner could not find an attorney who practiced in the state of Virginia to appeal the case at the Circuit Court level, and had been denied a Continuance with counsel at the District level while trying to find an attorney to plead the case. The state housing department in Richmond could offer no referrals or help in appealing an unreasonable and/or unlawful use of the 30-day lease termination clause. The petitioner was eventually referred to an attorney admitted to the bars of PA and DC who pled the appeal on behalf of the petitioner. The attorney of record for the appeal, Norman Landy, did not find any case on this point of law on record at the Virginia appellate level and the judge would not accept a case cited from outside the state. The judge also questioned this attorney's need to cross examine the respondent/plaintiff but the attorney persisted. Under cross examination the respondent/plaintiff/landlord stated several times that he simply wanted the tenant out of his property and the landlord replied in the affirmative when the attorney questioned further if his actions and statements were in fact retaliatory. The judge struck this last comment from the record but the record does show that at this point the

respondent turned away from the attorney to the judge and offered a comment directly to the judge not required by the cross examiner that the petitioner: "had worked for Alan Keyes and the Catholic Church."

A. The Conflict With The Governing Precedents of This Court. The Circuit court judge proceeded during the appeal of 28 November 2001 to cross examine the petitioner/ defendant/tenant regarding the history and facts of the case. However, the judge then questioned both the petitioner/ defendant and the petitioner/defendant's counsel: "when does retaliation end?" and "can a month-to-month tenancy go on indefinitely?" questions appropriate to a venue for academic or legislative but not judicial review where evidence of retaliation exists. The petitioner/defendant and the petitioner/defendant's counsel responded that those statutes and the lease termination clause presume *reasonable and licit* application, as well as reasonable material evidence to show they are not abused. However, the judge continued to change the direction and focus of the hearing from this point through the rendering of his opinion and judgment, from the evidence presented and testimony heard to a statement on the part of the judge, which the judge also cut from the written record (WSF) to enforce his view and rendering that there had never been any retaliation or non-compliance on the part of the landlord, and that retaliation had ended by November [even if it had taken place earlier in June, July or August] therefore judgment was rendered in favor of the respondent/ plaintiff/ landlord. Such arbitrary and capricious exercise of judicial power attacks "the very essence of civil liberty." (Marbury v. Madison, 5 U.S. [1 Cranch] 137, 163, [1803] [per Marshall, C.J.])

B. The Issue Is Important and Recurring. On 21 September 2001, the District Court denied the petitioner's request for a Continuance with counsel to speed the respondent/plaintiff's hearing even thought the case evidence

was complex and preceded by another court case with counsel on 1 June 2001 that barred such actions under *res judicata* as noted by the attorney of record. However, attorneys both in and outside Front Royal stated to the petitioner that the practice of the lower courts in Virginia would ensure the loss of any appeal despite the statutes in the Virginia Code for *Tenant Remedies*. 9/11 had also delayed the petitioner's ability to follow up on attorney referrals in time for the 21 September 2001 hearing in District court.

The deterioration of rental property in residential town neighborhoods in Front Royal and elsewhere in Virginia, as well as an increasing burden of complaints from neighboring homeowners, as well as tenants who can not find legal relief in the lower courts and who are most often unduly burdened by finding themselves forced to vacate a rental with an established address, or near their work, or in their choice of neighborhood due to the disregard of the lower courts for the laws enacted to protect tenants against unlawful retaliation and non-compliant practices, including the use of the 30-day lease termination clause to maintain such unlawful or unconstitutional custom, has lead to the formation of new town code officials and offices to record and regulate landlord tenant matters that only compound the difficulty and which could ultimately lead to other constitutional conflicts regarding property rights and privacy. Thus, the reoccurring failure of the courts to uphold legislation enacted to protect the common good, by the continued rendering of arbitrary and capricious judgments within the lower courts that maintain such abuses have infringed on the petitioner's fundamental federal constitutional right under the 14th Amendment to due process not only in this case, but in the ongoing motions related to it during the time of the appeals.

In fact, on 21 October 2002 the same judge that rendered the Judgment of 28 November 2001, denied the rent placed in escrow with the Circuit court under VA Code §55.248.29, both to record the need and ensure that repairs

were made after six months by disbursing the funds to the tenant, had in fact been maintained by the court in escrow and denied a motion by the petitioner corroborated by the witness of the town code official's office to disburse these funds for such repairs to the tenant; the same Circuit court also attempted to deny that the six months suspending bond posted December 28, 2002 covered the appeal to this Court; ordered the petitioner's rent increased in violation of the VA Code; and ordered that the landlord need only give a written notice to the tenant 24 hours before entering the apartment to do "routine maintenance" with the Circuit court's permission to "break the locks" if the tenant does not admit the landlord or his "agent/maintenance man." As of 4:30PM on October 22, 2002 the order had not been transcribed yet and could not be listed with this judge's other orders and judgments in the appendix of this petition.

C. The Decision Below Is Wrong. This decision is substantial conflict with the governing precedents of this Court relating to citizen's entitlement to due process of law under the 14th Amendment to the U.S. Constitution. As noted in the *Objection to the Final Judgment* the VA Code presumes the reasonable use of lease clause terms and prohibits other illegitimate, irrational and prejudicial uses, or enforcement as established by the VA Code, Article IV of the United States Constitution and the 14th Amendment.

II. The Court Should Review The Circuit Court of Warren County's Judgment That The Landlord Could Evict The Tenant And That The Landlord Was Not Acting In A Retaliatory and Non-compliant Manner Based On the Courts' Repeated Summary Dismissal of Evidence as Unproven

The Judgment of the Circuit Court of Warren County merits review not only because it substantially erodes those judicial and legislative safeguards that protect private

property as a common good by not only impacting the maintenance of a landlord's rental property but the property of tenants and homeowners alike, but the judgments' repeated dismissal of evidence as *unproven* underscores the self-serving, capricious and arbitrary nature of these judgments establishing law as "mere will exerted as an act of power" (Hurtado v. California, 110 U.S. 516, 535-38 [1884]) and substantially erodes the legislative and judicial safeguards that ensure that civil liability does not intrude on the sphere of activities protected by the Fourteenth Amendment, including but not limited to, the maintenance of racial, anti-religious or other unnatural and unconstitutional segregation, that can be irrationally motivated by long enduring habits of bigotry or prejudice.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Kristin R. Kazyak, *Pro Se*
128 West Main Street # 2
Front Royal, VA 22630

OCTOBER 22, 2002

APPENDICES

APPENDIX A

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond [this Summer session date held in the Courthouse at Winchester, Virginia] on Wednesday the 24th day of July, 2002.

Circuit Court No. L01000199-00
Kristin R. Kazyak, Appellant,
Against Record No. 020506
v.
Thomas L. Winstead, Appellee.
From the Circuit Court of Warren County

Upon review of the record in this case and consideration of the argument submitted in support of and in opposition to the granting of an appeal, the Court is of opinion there is no reversible error in the judgment complained of. Accordingly, the Court refuses the petition for appeal.

A Copy,
Teste:
David B. Beach, Clerk
By: Jennifer G. Earl
Deputy Clerk

APPENDIX B

VIRGINIA:

IN THE CIRCUIT COURT OF WARREN COUNTY
LAW NO: 01-199-00

THOMAS L. WINSTEAD, Plaintiff

v.

KRISTIN R. KAZYAK, Defendant

FINAL JUDGMENT ORDER POSSESSION AND DAMAGES

This case came before the Court on November 28, 2001, for trial on the Plaintiffs unlawful detainer action. The Plaintiff appeared in person without counsel, and the Defendant appeared in person with her attorney, Norman Landy, Esquire. Whereupon evidence was heard and argued. The Court finds that:

1. The Defendant is a tenant of the Plaintiff. The Tenant occupies one of three apartment units in a building which the Landlord owns, and she has been a tenant of the Landlord for six years.

2. The Tenant has a history of being delinquent in paying rent. In 2001 the Tenant was delinquent in paying rent, and the Landlord instituted a collection action against the Tenant. On June 1 2001, the Landlord obtained judgement against the Tenant for delinquent rent, and in June 2001, the Tenant paid the Landlord $3,550 for accrued rent.

3. The tenancy is now month to month, and on July 9, 2001, the Landlord gave the Tenant a notice to quit possession of the leased premises, but the Tenant refused to vacate the leased premises, so the Landlord filed this unlawful detainer

action.

4. After receiving the Landlord's notice of termination, the Tenant refused to surrender possession, and the Tenant claims that the Landlord may not terminate the tenancy because she complained about the hot water heater, and that the Landlord's termination of the lease is a retaliatory termination which is prohibited by the Virginia Landlord Tenant Act, Virginia Code sec. 55-248.39.

5. Since November 2001, the Tenant has complained that the hot water heater was using too much electric current, because the Tenant has to pay the electric bill. In August 2001, the hot water heater was replaced. However, the Landlord's termination of the lease was not proven to be retaliatory.

6. The monthly rent is $375.00 per month, which amount the Tenant has paid into Court pending this proceeding.

THEREFORE, it is ADJUDGED AND ORDERED that:

1. The Plaintiff THOMAS L. WINSTEAD SHALL HAVE POSSESSION of the leased premises at 1 28 W. Main Street, Front Royal, Virginia, and the Defendant KRISTIN KAZYAK shall vacate the leased premises on or before December 31, 2001.

2. The Clerk shall pay the Plaintiff the sum of $1,155.00 from the escrow account, which is for rent through November 2001, and the Defendant shall pay the Plaintiff directly $375.00 dollars on or before December 1, 2001, for

the balance of the December 2001, rent ($345.00), and for his costs of $30.00.

The Clerk is directed to send a copy of this order to the pa~ties, who shall file such objections hereto as deemed advisable within ten days of their receipt of a copy of this order. Endorsement is dispensed with pursuant to Supreme Court Rule 1:1 3.

Entered November 28, 2001.

John E. Wetsel, Jr., Judge

APPENDIX C

VIRGINIA:
IN THE CIRCUIT COURT OF WARREN COUNTY
LAW NO. 01-199-00
THOMAS L. WINSTEAD, Plaintiff
v.
KRISTIN R. KAZYAK, Defendant

ORDER CLARIFYING PROVISIONS OF SUSPENDING BOND

This case came before the Court on January 22, 2002, on the plaintiff's motion objecting to the fact that he had not been paid the monthly rent as ordered by this Court on December 17, 2001, as a condition of the suspending bond. The parties appeared in person without counsel.

Upon consideration whereof, it appears to the Court that the Defendant has paid the $375.00 per month to the Clerk of this Court which is now being held by the Clerk.

Therefore, it is ADJUDGED and ORDERED that:

1. The Clerk of this Court pay the rent funds which he has received from the Defendant Kazyak to the plaintiff Thomas L. Winstead as a credit against the rents.

2. Hereafter Defendant Kazyak shall pay the Clerk the sum of $375.00 for the rent on or before the first day of each month, and the Clerk shall send that rent payment to the Plaintiff Winstead.

Thereupon, the Court considered the fact that there is a pending Statement of h has just been filed, but has not been reviewed by the Defendant. Therefore, it is ADJUDGED and ORDERED that this case is se for hearing on the Statement of Facts on February 15, 2002, at 8:00 a.m.

The Clerk is directed to send a copy of this order to counsel of record and to any unrepresented party, who shall file such objections hereto as deemed advisable within ten days of their receipt of a copy of this order. Endorsement is dispensed with pursuant to Supreme Court Rule 1:13.

Entered January 2, 2002.

John E. Wetsel, Jr., Judge

APPENDIX D

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF WARREN

LAW NO. 01-199-00

THOMAS L. WINSTEAD, Plaintiff

v.

KRISTIN R. KAZYAK, Defendant

ORDER SETTING SUSPENDING BOND

This case came before the Court on December 1 7, 2001, on the Defendant's Motion for Determination of a Suspending Bond Pursuant to Virginia Code § 8.01-676. 1. The Plaintiff appeared in person without counsel, and the Defendant appeared in person without counsel.

Thereupon, the Court considered Virginia Code § 8.01-676.1 and the fact that rent of $375.00 per month is due the Landlord pending the appeal and that the Defendant must also post a bond for costs in the amount of $500.00.

Therefore, it is ADJUDGED and ORDERED that the proper amount of a suspending bond in this case is $2,250.00 (6 months rent), and that the judgment of this Court granting possession to the Landlord will be suspended until December 28, 2001, and thereafter provided that:

1. On or before December 28, 1 998, the Defendant, pursuant to § 8.01-

676.1, posts a suspending bond in cash or with surety or an irrevocable letter of credit in amount of $2,250.00 conditioned upon the satisfaction of the judgment and the payment of all damages which may be incurred as a result of this suspension. Upon the posting of the bond or the letter of credit, the judgment shall be suspended until the petition for appeal is acted upon by the Supreme Court of Virginia or until such time as the petition for appeal may be withdrawn by the appellant or otherwise dismissed.

2. Defendant has paid the Plaintiff $375.00 in December 2001 as ordered, and that the Plaintiff pay the Defendant rent of $375.00 on the first of each month during the pendency of the appeal.

The Clerk is directed to send a copy of this order to counsel of record, who shall file such objections hereto as deemed advisable within ten days of their receipt of a copy of this order. Endorsement is dispensed with pursuant to Supreme Court Rule 1:13.
Entered December 1 7, 2001.
John E. Wetsel, Jr., Judge

APPENDIX E

VIRGINIA:
IN THE CIRCUIT COURT OF WARREN COUNTY
LAW NO. 01-199-00
THOMAS L. WINSTEAD, Plaintiff
v.
KRISTIN R. KAZYAK, Defendant

ORDER CLARIFYING PROVISIONS OF SUSPENDING BOND

This case came before the Court on January 22, 2002, on the Plaintiff's motion objecting to the fact that he had not been paid the monthly rent as ordered by this Court on December 17, 2001, as a condition of the suspending bond. The parties appeared in person without counsel.

Upon consideration whereof, it appears to the Court that the Defendant has paid the $375.00 per month to the Clerk of this Court which is now being held by the Clerk.

Therefore, it is ADJUDGED and ORDERED that:

1. The Clerk of this Court pay the rent funds which he has received from the Defendant Kazyak to the Plaintiff Thomas L. Winstead as a credit against the rents.

2. Hereafter Defendant Kazyak shall pay the Clerk the sum of $375.00 for the rent on or before the first day of each month, and the Clerk shall send that rent payment to the

plaintiff Winstead.

Thereupon, the Court considered the fact that there is a pending Statement of h has just been filed, but has not been reviewed by the Defendant. Therefore, it is ADJUDGED and ORDERED that this case is set for hearing on the Statement of Facts on February 15, 2002, at 8:00 a.m.

The Clerk is directed to send a copy of this order to counsel of record and to any unrepresented party, who shall file such objections hereto as deemed advisable within ten days of their receipt of a copy of this order. Endorsement is dispensed with pursuant to Supreme Court Rule 1:13.

Entered January 2 2002.

John E. Wetsel, Jr., Judge

APPENDIX F

WRITTEN STATEMENT OF FACTS

28 November 2001 10AM — as recollected by Norman Landy, attorney for defendant, Kristin R. Kazyak

Another hearing was scheduled for the same time, and a hearing from the previous hour ran over by half. Judge Wetsel asked how long we needed to present our case. Thomas Winstead said: "5 minutes." Norman Landy replied he would need: "a full hour at least." Judge Wetsel asked attorney John Cadden about his case and if he was ready to present it, but John Cadden replied that all the witnesses were not in the court yet. Judge Wetsel then called the Winstead v. Kazyak case on or about 10:30AM.

Thomas Logie, Esq. of Front Royal, Virginia introduced Norman Landy, Esq. to the court and stated that Norman Landy was admitted to the bars of PA and DC, where he practices, and Norman Landy has an office in Virginia, but he does not usually accept cases in Virginia. However, the defendant, Kristin Kazyak, had requested that he represent her and his partner who was admitted to the bar and practiced in VA was out of the country. Judge Wetsel asked Thomas Winstead if he objected to Norman Landy pleading on behalf of Kristin Kazyak. Thomas Winstead did not object.

Evidence Heard and Argued

Judge Wetsel asked Mr Landy to proceed and asked how

he would plead. Norman Landy responded that the defense pleading cited the Virginia Residential Landlord and Tenant Act, articles 4, 5 & 6 for Tenant Remedies, Landlord Obligations and Retaliatory Action.

Judge Wetsel asked to see the code and specific sections. Discussion determining the application of the code to Thomas Winstead's property ensued. Judge Wetsel determined that the Landlord Tenant Act and sections of the Virginia code did apply to Thomas Winstead's rental property at 128 West Main Street. The defense entered pleadings that included the specific sections of the VA Code presented in the defense's *Findings of Fact* along with exhibits A-E, including the service of all warrants, letters, and notices from the plaintiff, Thomas Winstead to Kristin Kazyak *(see index)*, which were presented to and accepted by Judge Houss in the District Court and by Judge Wetsel in Circuit Court. This included the lease of 1996 and Judge Wetsel noted and confirmed with Thomas Winstead and Norman Landy that the lease was month-to-month after August 1997.

Judge Wetsel asked if Norman Landy could cite any cases as precedent for his defense and Norman Landy replied that he had found no cases on record in Virginia but cited a case from Vermont. Judge Wetsel considered cases outside Virginia irrelevant.

After entering the evidence of retaliation and non-compliance by the landlord, and stating the course of his pleadings asserting retaliation and non-compliance as the

defense, Norman Landy asked Judge Wetsel for permission to cross examine the plaintiff/landlord, Thomas Winstead.

Judge Wetsel asked Norman Landy what he expected to accomplish by this cross examination and Norman Landy replied that he wanted to give Thomas Winstead the opportunity to express his testimony to the court.

Cross Examination of Thomas Winstead by Norman Landy, Esq.

In the matter of the Hearing in the Circuit Court of Warren, to the best of my recollection, the testimony was as follows:

Thomas Winstead was called for cross examination under oath. I reminded the plaintiff, Thomas Winstead, that immediately prior to the Hearing, I had suggested as a compromise that he withdraw his Action and the defendant, Kristin Kazyak, would deposit in escrow a sum equivalent to six months rent and that he rejected this saying: "I want her out." Thomas Winstead confirmed that this was correct.

When asked if and when a new hot water heater was installed, that he had agreed in writing to install on June 1, 2001 (this Agreement, exhibit A, was in conjunction with the Settlement of an earlier legal action between the parties on June 1, 2001) Thomas Winstead's response was that he did not know when the hot water heater was installed but that he thought it was in July or August.

I then asked Thomas Winstead about two of Kristin Kazyak's windows that were sealed shut by paint and asked if he knew that his "agent", the maintenance man, had placed a brick or log under each window on the porch roof the afternoon the appeal bond was due, and Thomas Winstead indicated that he had no knowledge of this, nor was he responsible for it.

Thomas Winstead was questioned about his October 11, 2001 letter and statements that Kristin Kazyak had not paid rent for September and October and owed late fees when, in fact, Judge Houss had ordered that Kristin Kazyak pay the rent into escrow as bond when she noted the Appeal to the Circuit Court on September 21, 2001. Thomas Winstead had no explanation for not knowing about this.

Thomas Winstead also indicated that if the rent was paid into Court, he did not get it, but he was reminded that subsequent to a prior Hearing, rent for July and August had been ordered to be placed into escrow with the court by Judge Houss on August 3, 2001 and that Thomas Winstead did indeed manage to have it paid over to him at the Hearing on August 17, 2001.

I asked Thomas Winstead if Kristin Kazyak had asked him on August 3, 2001 if he would be happy if she paid him a year's rent in advance. Thomas Winstead replied that she had done so. Then Thomas Winstead turned away from me to Judge Wetsel and stated that Kristin Kazyak had also told him that she had worked for Alan Keyes and the Catholic Church.

Thomas Winstead was questioned at length in regard to whether his recent eviction proceedings had been done in retaliation to Kristin Kazyak's prior complaints about his ongoing code violations, non-compliance, and his diminishing or neglect of services. When it was suggested to him that his actions were "retaliatory" Thomas Winstead replied: "I suppose you could call it that or words to that effect."

I argued strenuously to the Court that from the evidence and all of Thomas Winstead's testimony, it was reasonable to infer that Thomas Winstead had acted and continued to act in a retaliatory manner in seeking to use the month-to-month lease clause to evict the defendant/tenant, Kristin Kazyak and by diminishing his services and obligations as landlord.

At this point, Judge Wetsel asked me: "When does retaliation end?" I replied that evidence and testimony of specific retaliatory acts by the landlord had just been presented and were under examination in this case, but that if we were to speculate academically on how to enforce the law, the code would presume retaliation ended when there was reasonable evidence of compliance and a cessation of retaliatory activity.

Judge Wetsel then asked Kristin Kazyak, who was suffering that morning from injuries received in a car accident four years prior, when she thought retaliation ended? Kristin Kazyak replied that she was in so much pain she could hardly think straight, but she answered : "the law

presumes reasonable activity on the part of the contractees and prohibits behavior that is non-compliant and/or retaliatory."

In rejecting my argument, the Court opined that because Kristin Kazyak's tenancy was on a month-to-month basis, even if Thomas Winstead did act in a retaliatory manner, nevertheless Judge Wetsel stated, a month-to-month tenancy cannot go on indefinitely since one of the parties can cancel it with 30 days notice, so Judge Wetsel inferred that an act of retaliation in July or August was now no longer a continuing one in November and hence concurred with the District Court's Opinion.

Judge Wetsel's examination of the defendant, Kristin Kazyak

— as recollected by defendant, Kristin R. Kazyak

After Thomas Winstead's cross examination by Norman Landy, Judge Wetsel asked Kristin Kazyak why she had not moved when she received Thomas Winstead's letter of July 9, 2001 giving her 30 days notice to vacate the property. Kristin Kazyak replied: "I have lived and paid rent there for 6 years. It is my established address. I was advised by counsel that the notices were illicit or invalid because of my testimony at the June 1, 2001 trial and because the Virginia Code suspends the landlord's use of the month-to-month clause if the landlord is retaliating and/or in non-compliance after being advised of deficiencies by letter or by testimony in court." Thomas Winstead had received both. Kristin

Kazyak stated she had received a letter in reply to her letter of June 11, 2001 from Thomas Winstead dated June 12, 2001 demanding thousands of dollars in addition to the Judgment she had paid him of June 1, 2001.

Judge Wetsel asked Kristin Kazyak if back rent had been owed and she replied that Thomas Winstead had accepted letters of assignment/lien from her personal injury attorneys but that when the accident trial was delayed, she had reduced the debt after the accident by half in a single year and asked Thomas Winstead if the remainder owed could be used to paint, repair and recarpet her apartment, which he had not done after the previous tenants damaged the apartment severely. Kristin Kazyak also noted to Judge Wetsel that she had expected this work to be done by the landlord when she paid Thomas Winstead six months of rent ahead at the time she moved into the apartment July 30, 1996. In April 2001, Thomas Winstead demanded all the money still due be paid at once and the Court issued a Judgment June 1, 2001, which she paid.

Judge Wetsel asked Kristin Kazyak how much the Judgment had been and she replied: $2,750.00 for the back rent, $50.00 for court costs and $750.00 for the May and June rent was added by Judge Houss and agreed to by her defense counsel in the Agreement (exhibit A) signed by Thomas Winstead. The total cashier's check she sent Thomas Winstead was for $3,550.00. She stated Thomas Winstead agreed to replace the hot water heater that served her apartment in his Agreement (exhibit A) but did not do so until she put the July and August rent in escrow with the

Court on August 3, 2001.

Kristin Kazyak's attorney had notified Thomas Winstead by a letter dated July 5 that demands for additional monies were barred from further adjudication and that the hot water heater that Thomas Winstead had purchased after the June 1, 2001 Hearing, was still unopened in its original packing box in the walk-in utility space, and had not yet been installed.

Kristin Kazyak stated to Judge Wetsel that Thomas Winstead did not reply to the attorney but sent, instead, the alleged 30 day notice of 9 July 2001, and then had his "agent", the maintenance man, serve an invalid Notice of Final Eviction to Kristin Kazyak on the apartment of another tenant (# 1) out of town on his honeymoon. Kristin Kazyak stated that concern for the newly weds coming home to find a warrant tied to their door knob caused her to check it whereupon she discovered it was a final eviction notice addressed to her at the wrong apartment. The tenants in # 1 moved in September, as had the previous tenant of # 1 in April of 2001, due to conditions existing in their apartments that resulted from the landlord's neglect, material non-compliance and failure to meet his obligations.

Judge Wetsel asked Kristin Kazyak when she had first notified the town authorities that there was an electric problem at her apartment. She replied: "In November 2000 when monthly kilowatt usage jumped from an average of 400 or 600 kw per month to 2400." Kristin Kazyak added that she had noticed anomalies in electric usage after moving in and had letters from the Town of Front Royal regarding

these problems since October 1996, the coldest winter on record in 20 years, but that in November 2000 something had happened to increase electric costs by 5 and 10 times the normal rates, and that it took the town electric authorities and experts till mid-April to isolate the source of the problem, which all the tenants at 128 West Main were experiencing, to the individual corroded hot water heaters, burnt out lower elements, and the lack of insulation in the utility room from outside temperatures.

Kristin Kazyak also stated she had notified Thomas Winstead before, during, and again after the June 1, 2001 trial in her letter of June 11, about these conditions and that Thomas Winstead had signed an Agreement (exhibit A) to remedy them, but that he had sent her, instead, additional money demands, including service of invalid final eviction notices, warrants, and multiple letters of 10 and 30 day notice for multiple mid-month dates that did not fulfill the legal requirements of lease notice, all of which are part of the Court's record. Kristin Kazyak repeated Norman Landy's assertion that this behavior was evidence in clear violation of the Virginia Code prohibiting retaliation and non-compliance. Kristin Kazyak stated that she had since paid rent into escrow with the court on the morning of August 3, 2001 because conditions still existed that constituted ongoing material non-compliance on the part of Thomas Winstead regarding his obligations and services as required by law, the lease, his Agreement (exhibit A) of June 1, 2001 and the court.

Kristin Kazyak said Thomas Winstead then had his

"agent", house painter and maintenance man, Ed Foster, who is not a license plumber in the state of Virginia, begin the replacement and installation of the hot water heater. Kristin Kazyak said she found a note from Ed Foster in the door frame to her apartment, barely inserted and holding by a hair such that a slight wind could have easily blown it away, on the afternoon of August 3 requesting that she contact him to schedule a time when she could turn off the power to the hot water heater. Kristin Kazyak said she spoke by phone with Ed immediately that Friday evening and that the hot water heater had been fully installed by Wednesday August 8, 2001.

Kristin Kazyak told Judge Wetsel that to date the utility room, which was exposed to outside temperatures, had not been insulated and the hot water heater was still not functioning properly. She stated that Thomas Winstead had not utilized the "free installation by a licensed plumber" offered by the seller and had retaliated against her previous audits by licensed town professionals on the old hot water heater by having his "agent", Ed Foster, change the lock and refuse to give her a key to the utility room. She stated that this also denied her access to her apartment's faucets and water she paid for to water her garden.

Kristin Kazyak repeated to Judge Wetsel that even though she was responsible, not the landlord Thomas Winstead, for paying the utility bills with these unnecessarily high and extreme costs, Thomas Winstead's retaliation had prevented her from having an independent audit made by licensed professionals regarding the installation, settings, and

functional efficiency of the new hot water heater.

Kristin Kazyak stated to Judge Wetsel that she had been forced for her protection by the landlord's charges in the Detainer of July 20 to ask the Town Building Code Inspector to inspect her apartment. Kristin Kazyak asserted that several major violations cited by the building code inspector during his inspection on August 28, 2001 also remained uncorrected to date [28 Nov 2001] and that the building code inspector had had to insist during the "walk through re-inspection" on October 4, 2001 that Thomas Winstead's "agent", Ed Foster, fix two violations cited in August and the inspector supervised as Ed cut the paint-sealed windows free from the inside to enable the tenant, and rescue personnel, to open them.

Kristin Kazyak further stated that these were the two windows that Ed Foster had placed the brick and log under on the afternoon of October 1, 2001. The building inspector also insisted that Ed drill larger holes in all the tenant's windows so that the security pins worked properly and the tenant, or rescue personnel, could open and close them properly, since the windows do not have functioning locks.

Judge Wetsel then stated that the lease was a month-to-month lease and asked Kristin Kazyak the question : "When does retaliation end?" The defendant, Kristin Kazyak, repeated that the law presumed a reasonable use of the month-to-month clause.

Closing Arguments Restated by Norman Landy

Judge Wetsel turned to defense attorney Norman Landy and repeated: "a month-to-month lease has to come to an end sometime so when does retaliation end?" I replied: "With respect to your Honor's reasoning, both evidence and testimony of specific retaliatory acts by the landlord have been given here and are under examination in this case. The law presumes the reasonable use of the month-to-month clause and reasonable evidence of compliance and non-retaliatory activity.

I again argued strenuously that given Thomas Winstead's testimony in Court and all the evidence, it was reasonable to infer that Thomas Winstead was acting in a retaliatory manner in seeking to evict Kristin Kazyak.

Final Judgment Order

Judge Wetsel stated that Thomas Winstead's retaliation had ceased, and ruled in Thomas Winstead's favor concurring with the District Court's Opinion that retaliation had not been proved and requiring that Kristin Kazyak vacate the apartment on or before December 31, 2001.

Judge Wetsel asked me if there were any extenuating circumstances he should know about and I encouraged the defendant, Kristin Kazyak, to explain the limitations imposed by her accident injuries. Kristin Kazyak requested an extension of the time to vacate until the end of February

and the completion of her personal injury trial in mid-February, stating that moving would imposed both unnecessary and severe hardships, and impact her ability to prepare for the accident trial. Kristin Kazyak stated as well that she could not lift or pack due to her injuries, and would require the help of her neighbors.

Judge Wetsel pointed out to her that he cautioned juries not to be moved by sympathy but to keep their minds on the facts and conclusions of the case, so he restated Kristin Kazyak would need to vacate the apartment by December 31, 2001. Judge Wetsel added that Kristin Kazyak would have lots of help because it was Christmas, but Kristin Kazyak puzzled a reply that everyone would be away with their families at that time and no one would be around. Judge Wetsel stated to her that she could have moved in July or August when the weather was better, but she had picked this time. Judge Wetsel asked Kristin Kazyak why she did not just go back to her family or wherever she had come from. Kristin Kazyak concluded: "This is where I live. I live in Front Royal."

Judge Wetsel proceeded to enumerate the Final Judgement Order that Thomas L. Winstead "shall have possession of the leased premises ... and the Defendant Kristin Kazyak shall vacate the leased premises on or before December 31, 2001." Judge Wetsel noted the bond for court costs posted with the Court on October 1, 2001 and the rent already in escrow for September, October and November, to be turned over to Thomas Winstead in the amount of $1125.00. The tenant Kristin Kazyak was ordered to pay rent

for December of $375.00 to Thomas Winstead on or before December 1, 2001.

Respectfully submitted 22 January 2002,
Norman Landy, Esq.

Law Office of Norman Landy
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Arlington, Virginia 22209
(703-522-5570)

Trial attorney on 28 November 2002 for the defendant:

Kristin R. Kazyak
128 West Main Street
Front Royal, Virginia 22630-2522
(540-636-8639)

APPENDIX G

The plaintiff in the above captioned case issued a summons for unlawful detainer in the District Court for Warren County Virginia on August 17, 2001. A judgment for the plaintiff was render by Judge Dale Houss for the District Court on September 21, 2001 and under appeal by Judge John E. Wetsel for the Circuit Court on November 28, 2001. Comes now Kristin R. Kazyak, the defendant, with counsel and submits the following:

OBJECTIONS TO THE FINAL JUDGMENT ORDER

Objections are submitted because the court findings as entered by Judge John E. Wetsel in the *Final Judgment Order* are out of order and do not accurately state evidence or testimony presented in court under oath on November 28, including testimony from the plaintiff given during cross examination, at which time the plaintiff stated his ongoing noncompliance and retaliation; and the *Final Judgment Order* rendered by Judge Wetsel fails to uphold and enforce the law as required by the tenant remedies section of the Virginia Code, which presumes the ***reasonable*** use of lease termination, including the month-to-month lease termination clause, and ***prohibits*** retaliation, non-compliance and other illegitimate, unreasonable and prejudicial uses, or enforcement, of tenant lease termination clauses as established in the Virginia Landlord Tenant Act and Article IV of the US Constitution.

Overall, Judge Wetsel's *Final Judgment Order* demonstrates that he scheduled insufficient time for due

deliberation in this hearing, and shows prejudice in favor of the landlord, ignorance of the tenant remedies section of the VA Code, and a preoccupation with topics irrelevant to the law, issues, facts, testimony and evidence of retaliation and non-compliance presented regarding this case. Allegations of rent delinquency were concluded and barred from further adjudication by *res adjudicata* in the Judgment of June 1, 2001.

While adequate time was given at the request of defense attorney Norman Landy, Esquire to his presentation of defense evidence, another hearing was scheduled for the same time, a hearing from the previous hour ran over by half, and in chambers during the scheduling for this hearing on 15 October 2001, Judge Wetsel counseled the landlord on the phone as to how to proceed against the tenant.

Objections by specific number in the *Final Judgment Order* court findings include:

2. Records and evidence presented show the defendant was ***not*** "delinquent in paying rent in 2001" because rent was placed in escrow with the court as protected by law during such proceedings, *nor* was "delinquency" an issue in this case since the defendant's court appearance and a judgment on 1 June 2001 *predate* the plaintiff's noncompliant and retaliatory acts and the defense against them presented in this case. In June any rent deferred previously by the landlord and still secured by *Letter of Assignment* by the defendant's counsel was paid

current with the Judgment of June 1 and barred by *res adjudicata* from further legal action. The defendant placed rent *in escrow* with the court from July through November during the defendant's response in court to *all* the additional legal actions initiated by the plaintiff and under consideration in this case.

3. The landlord served *many* illicit and invalid notices to the defendant from June 12 through October 11. The Virginia code presumes the reasonable and licit use of any final eviction notices, warrants, 10 day extortion or demand letters, or 30 day lease termination letters. Testimony and evidence showed the plaintiff's uses were, are, and clearly remain suspended, or waived, and illicit under the sections of the Virginia Code for *Tenant Remedies*, which prohibit landlord retaliation and non-compliance, ***but Judge Wetsel does not order reasonable evidence of compliance and a cessation of retaliation on the part of the landlord (plaintiff) with regard to the landlord's obligations to the tenant (defendant) as required under the law.***

4. As evidence presented demonstrates, the defendant was under counsel from June through December *not* to surrender possession because the warrants, etc. were and remain either invalid nor illicit under the conditions established by VA Code for their reasonable use. The defendant's appearance in court regarding the hot water heater and defendant

complaints to the authorities and the landlord ***all predate*** the landlord's demands and 30 day notices for possession from June 12 on, which were under consideration in this case. The defendant's counsel presented evidence for defense, not limited to section 55-248.39 but also comprehensively providing defense and commanding reasonable enforcement by sections 55-222, 55-248.23-26, 25, 29, 34, 37, *and* 39.

The defense also noted during cross examination that on August 3, the plaintiff rejected an offer for payment of rent a year in advance. The plaintiff stated he would *not* be happy until the defendant was out and he would do *anything* it took to get the defendant out.

5. As presented by defense counsel to the court, defendant complaints with the town authorities, including letters and meter readings, are on record as early as two months after the defendant (tenant) leased the apartment at the end of August 1996. Defendant complaints on record include letters from the authorities about the electric usage and meter readings from October 1996 when the original hot water tank failed, but records show the replaced elements only remedied the problem for about three (3) months and failed repeatedly until **November 2000** at which point the problem became extreme and the defendant spent five (5) months working with expert electricians, electrical engineers and licensed

plumbers to audit and investigate the matter thoroughly so a remedy could be presented to the landlord, who had already lost three tenants by April 2001. After this five (5) months of intensive investigation, town experts identified the deteriorated condition of the hot water heaters in the building as the cause of the electric problems and cost overruns and detailed the reasons to the defendant in April 2001.

As records clearly show, at no time did the defendant plan, enact, or engage in any legal actions against the landlord. As presented in court, the *condition of the apartment* at the time the Realtor for the landlord (plaintiff) rented the apartment to the defendant in August 1996, was well below normal and reasonable rental standards, including those mandated by the building code, town ordinances, ***and federal code*** due to years of neglect and damage to the apartment by previous tenants and not repaired by the landlord. The apartment had been rented to several tenants between 1989 and 1996 without cleaning, repair or repainting and while Kazyak paid *six months rent* in advance of moving in to facilitate the repairs and painting, the landlord neither painted nor repaired the apartment.

6.2 Rent in escrow to perfect and secure the appeal in Circuit Court was 375 x 3 (Sept, Oct, Nov) = 1125 + $30 court costs and rent for Dec 375 (not 345 but Judge Wetsel added $30 to 1125 = 1155 and then

subtracted it from the 375 rent = 345 but states the defendant still needs to pay 375 which does not add up since the 1155 includes the 30 court costs).

CONCLUSIONS OF LAW

As cited in the defendant's *Findings of Fact and Conclusions of Law*, the code of Virginia prohibits retaliatory conduct on the part of the landlord and suspends or waivers the landlord's right to terminate a lease under several conditions, which include decreasing services, noncompliance and/or evidence of intent to retaliate.

The plaintiff's retaliatory and illicit service of multiple and specious warrants, writs of possession and final eviction, letters, from 12 June through 11 October 2001 and under consideration in this case, demanding or extorting additional monies while threatening 10 and 30 day notice of termination of occupancy, and the landlord's (plaintiff's) ongoing noncompliance in providing legitimate services and remedies for malfunctioning utilities, deterioration, etc. to date do not demonstrate reasonable use of the lease termination clause and thereby do not fulfill either the spirit or the letter of the law as established by the Virginia Code.

1. §55-248.25 Landlord's noncompliance regarding both known conditions and building code violations that exist at 128 W Main Street which constitute or will constitute a fire hazard and/or serious threat to life, health or safety of occupants thereof.

2. §55-248.39 Retaliatory conduct prohibited. Landlord may not retaliate by increasing rent or decreasing services or by bringing or threatening to bring an action for possession or by causing a termination of the rental agreement after he has knowledge that: (I) the tenant has complained to a governmental agency ... (iv) the tenant has testified in a court proceeding against the landlord. (b) The tenant is entitled to the applicable remedies... including recovery of actual damages, and may assert such retaliation as a defense in any action against him for possession

3. §55-248.34 Waiver of landlord's right to terminate due to acceptance of periodic rent payments with knowledge of a material noncompliance constituting a waiver of the landlord's right to terminate the rental agreement

4. §55-222 Thirty days' notice NOT in writing prior to the end of the month of his intention to terminate the same

5. §55-248.37 written notice at least 30 days prior to the next rent due date

6. §55-248.23-26 landlord has willfully neglected and/or diminished services to the tenant by causing the interruption of essential services and hardship to the tenant; motion can be entered to (1) recover damages and (2)(b) if the tenant proceeds under this

section, he shall be entitled to recover reasonable attorney fees

7. §55-248.39 tenant is entitled to the applicable remedies... including recovery of possession and actual damages, and may assert such retaliation as a defense in any action against him for possession

8. §55-248.29 ...an order may include, but is not limited to, any one or more of the following: ... (e) Ordering any amount of monies accumulated in escrow disbursed to the tenant where the landlord refuses to make repairs after a reasonable time

Respectfully submitted 10 December 2001,

Kristin R. Kazyak
128 West Main Street
Front Royal, Virginia 22630-2522

APPENDIX H

IN THE
SUPREME COURT OF VIRGINIA
RECORD NO. 02 - 05 - 06

PETITION FOR APPEAL
KRISTIN R. KAZYAK, Appellant
v.

THOMAS L. WINSTEAD, APPELLEE

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NATURE OF THE CASE AND MATERIAL PROCEEDINGS

The nature of this case is a Petition for Appeal from a civil trial and subsequent *Final Judgment Order* on 28 November 2001 in the Circuit Court of Warren County concerning a Summons for Unlawful Detainer issued to the Appellant/Defendant in the matter of *Thomas L. Winstead v. Kristin R. Kazyak.* Judge John E. Wetsel ruled for Appellee (Plaintiff/ landlord) against the Appellant/ (Defendant/ tenant) Kristin R. Kazyak, who was *ordered* to vacate the leased premises on or before 31 December 2001, with

possession of the leased premises at 128 West Main Street and damages including rent in escrow with the court plus court costs totaling $1530.00 going to Thomas L. Winstead, Appellee/ (Plaintiff/Landlord). The case had been tried in the General District Court of Warren County on 21 September 2001.

ASSIGNMENTS OF ERROR

[Roanoke v. Times] With respect to the Circuit Court's Final Judgment Order of November 28, 2001, rendered by Judge John E. Wetsel, Judge Wetsel **fails to make his judgment on the facts and individual merits of the case and, as clearly indicated in the record, works instead to make law by his decision.**

[Title 55: Virginia Landlord Tenant Act &
Article IV of the US Constitution] The decision by Judge Wetsel on November 28, 2001 fails to uphold and enforce the law as required by the Tenant Remedies section of the Virginia Code, which law presumes the reasonable use of lease termination, including the month-to-month lease termination clause, and prohibits retaliation, non-compliance and other illicit, unreasonable and prejudicial uses, or enforcement of tenant lease termination clauses as established in the Virginia Landlord Tenant Act and Article IV of the US Constitution.

Overall, Judge Wetsel's Order demonstrates that he gave insufficient time for due deliberation during this trial and his decision shows prejudice in favor of the landlord, ignorance of the tenant remedies section of the Virginia Code, and a

preoccupation with topics appropriate to a legislative and not a judicial venue, and therefore irrelevant to the issues, facts, testimony and evidence of landlord retaliation and noncompliance presented in court regarding this case and the laws already defined and applicable in Virginia.

[*res adjudicata*] Allegations of rent delinquency were concluded and barred from further adjudication by res adjudicata in a District Court Judgment rendered by Judge John Dale Houss on June 1, 2001 yet allowed and set for hearing by Judge Houss August 3 for trial on August 17 and again on September 7 for trial September 21, 2001 and once again reintroduced by Judge Wetsel in the Circuit Court of Appeals.

[§55-248.39 (iv)] Retaliatory and noncompliant acts by the Appellee/ Plaintiff, Thomas L. Winstead, under consideration during the trial 28 November 2001, specifically post date the court hearing on 1 June 2001 and his signed Agreement in court on that date reaffirming the Appellant/ tenant/ Defendant's lease of August 1996.

On 28 November 2001, another hearing was scheduled for the same time, a hearing from the previous hour ran over by half, and in chambers during the scheduling for this hearing on 15 October 2001, Judge Wetsel counseled the landlord on the phone as to how to proceed against the tenant. Judge Wetsel makes numerous mistakes in his order concerning the details and chronology of material evidence and events as well as cross examination testimony.

Specific to Judge John E. Wetsel's Final Judgment Order ASSIGNMENTS OF ERROR include:

[§55-248.27] (2) Records and evidence presented show the defendant was not "delinquent in paying rent in 2001" because rent was placed in escrow

[§55-248.28b] with the court as protected by law during such proceedings, nor was "delinquency" an issue in this case since the defendant's court

appearance and a judgment on 1 June 2001 predate the plaintiff's non-compliant and retaliatory acts and the defense against them presented in this case. In June any rent deferred previously by the landlord and still secured by Letter of Assignment by the defendant's counsel was paid current with the Judgment of June 1 and barred by *res adjudicata* from further legal action. The defendant placed rent in escrow with the court from July through November during the defendant's response to all the additional legal actions initiated by the plaintiff and under consideration in this case.

[§55-248.34] (3) The landlord "gave" many illicit and invalid notices to the defendant from June 12 through October 11. The Virginia code presumes the

[§55-248.39] reasonable and licit use of any final eviction notices, warrants, 10 day extortion or demand letters, or 30 day lease termination letters.

[§55-248.21] Testimony and evidence showed the plaintiff's uses were, are, and clearly remain suspended, or waived, and illicit under the sections of the

Virginia Code for Tenant Remedies, which prohibit landlord retaliation and non-compliance,

[§55-248.13] but Judge Wetsel does not order reasonable evidence of compliance and a cessation of retaliatory activity on the part of the

landlord (plaintiff) with regard to the "landlord's obligations" to the tenant (defendant) as required under the law.

[§55-248.36] (4) As evidence presented demonstrates, the defendant was under counsel from June through December not to surrender possession

because the warrants, etc. were and remain either invalid nor illicit under the conditions established by VA Code for their reasonable use. The defendant's appearance in court regarding the hot water heater and defendant complaints to the authorities and the landlord all precede the landlord's demands and 30 day notices for possession from June 12 on, which were under consideration in this case. The defendant's counsel presented evidence for defense, not limited to section 55-248.39 but also comprehensively providing defense and commanding reasonable enforcement by sections 55-222, 55-248.13, 21, 23, 25, 26, 29-30, 34, 36, 37, 38, 39 and 40.

[WSF 3:16] The defense also noted during cross examination that on August 3, the plaintiff rejected an offer for payment of rent a year in advance. The

plaintiff stated he would not be happy until the defendant was out and he would do anything it took to get the

defendant out.

[res adjudicata] (5) As presented by defense counsel to the court, defendant complaints with the town authorities, including letters and

meter readings, are on record as early as two months after the defendant (tenant) leased the apartment at the end of August 1996. Defendant complaints on record (see Table of Exhibits in Record) include letters from the authorities about the electric usage and meter readings from October 1996 when the original hot water tank failed, but records show the replaced elements only remedied the problem for about three (3) months and failed repeatedly until November 2000 (and not November 2001 as stated in Judge Wetsel's Order) at which point the problem became extreme and the defendant spent five (5) months working with expert electricians, electrical engineers and licensed plumbers to audit and investigate the matter thoroughly so a remedy could be presented to the landlord, who had already lost three tenants by April 2001. After this five (5) months of intensive investigation, town experts identified the deteriorated condition of the hot water heaters in the building as the cause of the electric problems and cost overruns and detailed the reasons to the defendant in April 2001. The fact that there may have been prior noncompliance and retaliatory acts on the part of the Landlord/Plaintiff and evidence thereof was not addressed specifically during the June 1, 2001 hearing and both the payment of the Judgment by the Defendant and the Agreement signed by the Landlord/Plaintiff determined and reestablished the terms of obligation on equal footing.

[§55-248.40] As records clearly show, at no time did the defendant plan, enact, or engage in any legal actions against the landlord. As presented in court,

the condition of the apartment at the time the Realtor for the landlord (plaintiff) rented the apartment to the defendant in August 1996, was well below normal and reasonable rental standards, including those mandated by the building code and town ordinance codes, due to years of neglect and damage to the apartment by previous tenants and unrepaired by the landlord. These damages remain unrepaired to this day, and after the landlord served the tenant with a Warrant for "damages" on 20 July 2001 in the amount of $4,250.00, the tenant requested town authorities inspect the apartment to confirm these code violations pre-existed the date of the lease of August 1996. The Appellee/Plaintiff non-suited that Summons on 17 August 2001 and demanded his rent monies, which the Court had placed

[§55-248.29 c/e] in escrow. The General District Court ruled at that time that the Landlord should receive the monies in escrow, over the

objections made by the Appellant/Defendant that this also violated §55-248.29 c/e, which continues to be an ongoing error of both the Circuit and General District Court practice.

[§55-248.29 c/e] (6.2) Rent in escrow was used to perfect and secure the appeal in Circuit Court. Judge Wetsel's Final Judgment Order

and his Order Clarifying Provisions of Suspending Bond released rent in escrow to the Appellee even though the noncompliance and retaliatory acts continue to this day and have been further established by Town inspectors as recently

as 2 January 2002. Several provisions in the Final Order were inaccurate and corrected in the Appellant's Objections to the Final Order to show that 375 x 3 (Sept, Oct, Nov) = 1125 + $30 court costs and rent for Dec was 375 (not 345 since Judge Wetsel added $30 to 1125 = 1155 and then subtracted it from the actual 375 rent = 345 but stated also that the defendant still needed to pay 375 which did not add up since the 1155 includes the $30 court costs).

STATEMENT OF FACTS RELEVANT TO ASSIGNED ERRORS

[Title 55] On November 28, 2001, in the Circuit Court of Warren County, the Defendant entered a plea that the Plaintiff/landlord Thomas L. Winstead had used and continued to use various forms of retaliation and non-compliance in violation of and prohibited by the Virginia Code 55 Articles 3, 4 and 6 in order to force the Defendant to vacate her apartment at his rental property.

[res adjudicata] Trial proceeded with exhibits and pleadings entered and received by Judge Wetsel, showing that after the court hearing [55-248.39 (iv)] and Judgment of 1 June 2001, and after which the Appellant/Defendant paid the Judgment amount of $3,550.00 directly to the Plaintiff and not into a court escrow account and also sent the Plaintiff, Thomas Winstead, a letter restating in writing the critical repairs needed and which necessary repairs had also been discussed with the Plaintiff both before and during the trial of 1 June 2001, the Plaintiff sent a letter (Exhibit B) to the Defendant, Kristin Kazyak, demanding an additional post

Judgment amount of $1,125.00, making critical repairs promised in an Agreement (Exhibit A) the Plaintiff signed in District Court on June 1, 2001 and, in the Plaintiff's words, any "additional improvements" sought by the Defendant, contingent on payment of this new demand amount.

[55-248.21,34, 39] However, after Appellee, Thomas Winstead, received a letter clarifying the Judgment of 1 June 2001 from the Appellant/Defendant's attorney (Exhibit B) in that case, the plaintiff, in contempt of the District Court's Judgment and the letter of elucidation by the Defendant's attorney at that hearing, began a campaign of illicit letters (Exhibit B), final eviction notices (Exhibit C), warrants/ summons (Exhibit D), threats and other procedures to force the Defendant to vacate the rental property. These included allegations that charged the tenant with damage incurred to the property by previous tenants and monetary demands for "damages" starting at $4,250.00. To establish the age and ongoing nature of the long term noncompliance of the Appellee/ Landlord/ Plaintiff, the Appellee/ Tenant/Defendant requested official inspection of the apartment in August 2001 and January 2002 (Exhibit E).

It should be noted that the Appellant has expended significant effort and money to improve the safety and appearance of the property, as well as find responsible and reliable tenants for the landlord, prior to the Appellant's discovery of the source of the extreme utility cost overruns. Due to the obstinate refusal of the Appellee to repair these and other long-term violations of the code, Thomas Winstead has lost several tenants recently. It is both to remedy these matters and to protect the Appellant's lawful and continued

rental of the property that the Appellant/Defendant has had recourse to call on and affirm the remedies, protections and defense established by law for residential tenants in the State of Virginia.

PRINCIPLES, ARGUMENT, AUTHORITIES

[Roanoke v. Times] In the presence of a statutory prohibition, there exists both legal and constitutional mandates placed on the lower courts for the enforcement of those statutory prohibitions. Landlord retaliation and noncompliance are prohibited by law in Virginia. That prohibition is found in legislative enactment and cannot and should not be ignored with impunity or done (i.e., legislated) by judicial fiat.

[Title 55, a. 2, 4, 5, 6] These sections of the Virginia Residential Landlord and Tenant Act protect responsible tenants from irresponsible, delinquent or unreasonable acts by a landlord and thereby protect residential home owners from a depreciation of their property.

However, if in practice the rulings of the courts allow to stand, or overlook, abuse of the month-to-month lease clause for acts of bigotry, racial prejudice or any other emotional, irrational, unreasonable, unlawful or illicit activity on the part of a landlord, then both the legislated purpose and protections of the law for the common good of all citizens of the Commonwealth are compromised or negated.

Judge Wetsel's comments to the Defendant and Defense Attorney on 28 November 2001 and his subsequent ruling

are equivalent to stating that because a Court cannot determine, or the law does not determine for the Court, when a thief will stop stealing, the Court cannot or will not determine that the thief stole despite testimony on the thief's part that the thief did steal, and/or any and all material evidence that the thief was in fact stealing during the time period under examination.

[W 2:24-3:23] It should be noted that Judge Wetsel struck from or "corrected" in the Appellant's Written Statement of Facts, only one statement in testimony

given under oath by the Appellee/Plaintiff during cross examination by the defense counsel, Norman Landy, Esq. that demonstrated the Appellee/Plaintiff's intent was retaliatory. However, the entire cross examination and all material evidence taken as a whole, fully establish both ongoing noncompliance and the intent to retaliate in order to force the Appellant to vacate the property. Judge Wetsel "corrected" in substance the same point in two other citings [W 3:24-25 & 4:7-8]. Whether this is merely self-serving or the Judge wishes to indicate that he did not hear or admit this testimony concerning retaliation due to a predisposition in favor of the landlord, inexperience with the Tenant Remedies section of the Virginia Code, a preoccupation with other matters at the same time, or his ruling, it should be noted that ten significant and substantive "corrections" were also made in what Judge Westel admitted on 19 February 2002 from the Plaintiff, not as Objections to the Written Statement of Facts, but as Thomas Winstead's additional and late submission of his own Written Statement of Facts. The Appellant's Objections to these concerned substantive

changes to facts made by the Appellee. It is to be noted that it is not a slight matter to "mistake" or deliberately confuse the trial of 1 June 2001, with the 21 September 2001 trial nearly four months later on an entirely different matter.

CONCLUSION

WHEREFORE, Appellant/Defendant prays this Court reverse Judge Wetsel's decision and the order of the Circuit Court of Warren County **because as a matter of law there has been a failure on the part of the court and judge(s) both to look at and to judge the individual circumstances and facts of this case in a manner that upholds and enforces the established laws of Virginia, which give a tenant defense, protection and remedy from retaliatory and non-compliant acts by a landlord,** particularly after having informed the landlord of any repairs needed or failures on his part, either within the context of testimony in a court proceeding and/or in writing.

Respectfully submitted 28 February 2002,
KRISTIN R. KAZYAK, *pro se*

APPENDIX I

INDEX — Exhibit Chronology
2001
06-01-01 [A]
Agreement signed by Thomas Winstead and presented to Judge Houss during the June 1, 2001 Hearing.

06-12-01 [B]
Letter of June 12 demanding an additional post Judgment amount of $1,125.00

07-05-01
Tenant attorney's reply letter dated July 5

07-09-01
Certified Letter from Landlord dated "June 9" mailed July 9 alleged to be a 30 day notice but claiming possession on August 15.

07-13-01 [C]
FINAL NOTICE OF EVICTION - issued and served July 13 - for eviction on July 18

07-20 [D]
Warrant / Summons for Unlawful Detainer issued July 20 for $4,250.00 (null suited Aug 17)

07-31 / 08-10 / 08-23-01
Letters to and from Thomas Winstead (re: apartment # 1) noting uninstalled new hot water heater. Winstead states he will not remedy their need for reasonable electric service including a new hot water heater. They moved Sept 15, 2001.

08-03-01
Return date set for Aug 17 for detainer charging tenant with

damages $4,250. Tenant requests and court orders tenant to put $750 in escrow for the July and August rent due to ongoing material non-compliance of landlord.

08-16-01
Tenant request to the Warren County building inspector to review and audit apartments for ongoing safety and electric violations

08-17-01
Warrant / Summons for Unlawful Detainer issued Aug 17 re: alleged 30 day notice

09-07-01
Certified Letter from Landlord mailed received 9/13 with tenant copy of Bill of Particulars missing alleged letter of July 6 but sent to the Warren District Court and photocopied for Kristin Kazyak by the District Court clerk

09-07-01 [E]
Certified Letter from Warren County Dept of Building Inspections citing violations still existing at 128 West Main Street with Time Limit for correction 30 days from receipt, but as of the date of the Grounds of Defense no attempt had been made to fix these problems, and the tenants in #1 moved out Sept 15 due to Thomas Winstead's lack of remedy to the serious problems in their apartment. #1 was also vacated by the tenant before April 1 for the landlord's failure to remedy the same electric, safety and security problems affecting all tenants living at the Winstead property.

09-11-01
(Crumpled 1st class mail letter mailed and posted after the attacks Sept 11, 2001) received on 9/13 in separate mail from Certified Bill of Particulars also received on 9/13

09-13-01
Received Certified with the Bill of Particulars a letter dated August 10 demanding A$3,75.00 [sic] in back rent plus $37.50" with 10 day notice to move and another 30 day notice claiming possession October 13

09-13-01
Newly invented letter of July 06 demanding 10 days for payment of $3,375 with yet another alleged 30 day notice claiming possession August 13

10-01-01
Police photos of heavy objects under the sealed windows

10-01-01
Faxes of Oct 1 and 3 to landlord after "agent" puts heavy objects under paint-sealed windows the afternoon of the Appeal deadline (Appeal had already been perfected that morning before 11AM)

10-11-01
Letter to tenant from landlord stating rent for September and October had not been paid and that tenant's concerns were "petty complaints over non-pertinent issues."

2002
01-02
Correction/Code Violation Checklist

01-03-02
Notice of Violation letter to Thomas L. Winstead from the Town of Front Royal Code Official

01-09-02
Thomas Winstead's reply to the Code Official

01-17-02

Fax from Code Official to Kristin Kazyak

04-04-02
Fax from Kazyak to Winstead and Code Official to invite and reaffirm to Winstead that Kazyak is readily available at any time to admit repair man and "to arrange times and any preparatory measures to facilitate the repairs" with Winstead

04-12-02
Code Official extends Winstead another 60 days to make repairs

07-01-02
Winstead via his "agent/maintenance man" calls to arrange time for repairs *after* June 30, 2002 deadline.

10-21- 2002
Code Official confirms repairs still not made; orders Winstead to report for inspection;

Judge Wetsel denies disbursement to tenant for repairs, the rent in escrow with the court from July 1, 2001 to June 30, 2002; refuses to review or consider Town Code Authorities documents establishing ongoing non-compliance and retaliation; orders rent increased in direct violation of the VA Code; tries to terminate suspending bond (6 months rent in escrow with the court) ordered in December for the duration of the appeals process; in direct violation of the VA Code, Judge Wetsel orders the landlord to give only 24 hour written notice of intent to enter the tenant's apartment with instructions to "break the locks" if the tenant is away or cannot admit the landlord for this "routine maintenance" (Judge Wetsel does not clarify how the landlord will serve this 24 hour written notice or whether he or the court will assume liability for harm done the tenant's person or property). In 8 years, the landlord had not done any "routine maintenance."

History of correspondence with Town of Front Royal entered in pleadings to the courts 21 Sept and 28 Nov

07-29-96
1996 Standard Dwelling Lease for 128 W Main Street # 2

10-03-96
Letter from John O'Neill - meter check - hot water heater fixed

12-18-00
Additional meter re-reading jump from 400-600 units/month to 2400

01-24-01
Additional meter re-reading

02-14-01
Test of electric meter -- found to be functioning correctly

04-09-01
Data and graphs from audit of electric usage and loads done by Town of Front Royal Electric 04/09-11/01 along with tests done by electric engineers demonstrating the cause was the malfunctioning hot water heater

04-19-01
Garland Estep tests hot water heater elements and explains why the electric costs and kw usage is so high (photos)

08-16-01, 11-05-01
Complaint logs to the Building Code Inspector

08-30-01
Electric inspector checks ongoing violations and explains

Kristin Kazyak was being shocked not by electric stove but by bleeding electric current from hot water heater when running water in the kitchen sink and touching pots on the stove

09-07-01
Certified Violations Notice to Thomas Winstead from Building Inspector

11-01-01
Police Photos of heavy objects [logs and bricks place by Winstead's "agent"] under sealed windows

2002 01-02-02
Town Code Official inspection and checklist of tenant's apartment citing violations existing from before the start of the tenant's lease in August 1996; conditions noted by Warren Brown and/or his agent leasing the apartment to Kristin Kazyak during the walk-through on July 28, 1996 (photos taken); violations shown to Ed Foster in early August 1996; shown to Ed Foster and Thomas Winstead together in June 1999 (photos taken); shown in photographs to Thomas Winstead before going into court on June 1, 2001 (photos); noted by the Building Code inspector during the August 28, 2001 inspection

01-03-02
Notice of Violation letter to Thomas L. Winstead from the Town of Front Royal Code Official

01-09-02
Thomas Winstead's reply to the Code Official

01-17-02
Fax from Code Official to Kristin Kazyak; violations remain uncorrected; ongoing material non-compliance, neglect and retaliation of landlord continues